

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[Docket No. PRM-2-12]

Michael Stein;
Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking dated July 26, 1999, filed by Michael Stein (petitioner). The petition has been docketed by the Commission and has been assigned Docket No. PRM-2-12. The petitioner believes that the NRC regulations pertaining to deliberate misconduct and employee protection do not contain certain needed safeguards. The petitioner is requesting that the NRC regulations pertaining to employee protection and deliberate misconduct be amended to ensure that all individuals are afforded the right to respond to an NRC determination that the individual has violated these regulations.

DATE: Submit comments by (75 days following publication in the Federal Register).

Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

You may also provide comments via the NRC's interactive rulemaking website (<http://www.ruleforum.llnl.gov>). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-415-7162 or Toll Free: 1-800-368-5642 or E-mail: DLM1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 1999, the Nuclear Regulatory Commission (NRC) received a petition for rulemaking submitted by Michael Stein (petitioner). Although Mr. Stein is an employee of the NRC, he submitted the petition as an individual member of the public. The NRC recently initiated an enforcement action involving a notice of violation against an individual without conducting a prior pre-decisional enforcement conference. As a result, the petitioner states that the NRC regulations pertaining to deliberate misconduct and employee protection do not contain certain important safeguards. The petitioner requests that the NRC regulations governing deliberate misconduct and employee protection be amended to ensure that all

individuals are afforded the right to respond to an NRC determination that the individual has violated these regulations before the NRC issues the action.

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM-2-12. The NRC is soliciting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioner requests that the title of the NRC regulations codified at 10 CFR Part 2, Subpart B be amended to be the "Procedure for Imposing Requirements by Order, or for Modification, Suspension, or Revocation of a License, or for Issuance of a Notice of Violation to an Individual, or for Imposing Civil Penalties." The petitioner also suggests amending 10 CFR 2.201 entitled, "Notice of Violation," by adding a new paragraph (b). In a meeting between the petitioner and the NRC staff on October 14, 1999, the language of suggested paragraph was modified by changing the word "order" to "Notice of Violation" each time it appears in the second sentence of paragraph (b)(2) and to include Part 76 in the list of 10 CFR parts presented in the introductory text of paragraph. The NRC notes that a paragraph (b) currently appears in the codified text of §2.201. Therefore, the NRC is presenting the paragraph suggested by the petitioner as a new paragraph (c). The new paragraph suggested by the petitioner would read as follows:

§2.201 Notice of violation.

• * * * *

(c) In response to an alleged violation of the employee protection or deliberate misconduct regulations contained in 10 CFR Parts 19, 30, 40, 50, 60, 61, 70, 72, and 76 the Commission may serve on the individual a Notice of Violation as described in 10 CFR 2.201(a). This Notice of Violation to the individual shall state that:

(1) The answer to the Notice of Violation shall state any facts, explanations, and arguments denying the charges of violation;

(2) If the individual charged with the violation files an answer denying the violation, the Executive Director for Operations, or the Executive Director's designee, upon consideration of the answer, will issue an Order imposing, mitigating, or withdrawing the Notice of Violation to the individual. The individual charged with a violation of the employee protection or deliberate misconduct regulations may, within twenty (20) days of the date of the Notice of Violation or other time specified in the Notice of Violation, request a hearing;

(3) If the individual charged with an employee protection or deliberate misconduct violation requests a hearing, the Commission will issue an order designating the time and place of the hearing;

(4) If a hearing is held, an order will be issued after the hearing by the presiding officer or the Commission dismissing the proceeding, or imposing, mitigating or withdrawing the Notice of Violation. This shall be considered the final NRC action with regard to the Notice of Violation at issue in the proceeding.

The petitioner suggests that the current NRC regulations pertaining to employee protection be amended. Although the petitioner did not specifically identify the employee protection regulations to be amended, the NRC believes that these regulations are 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, 72.10, and 76.7. The Commission specifically requests comments on whether this is a complete list of employee protection regulations that should be amended under the petition. The petitioner's suggested language reads as follows:

An individual charged with a violation of the employee protection regulations in Part X, has the right to a hearing pursuant to 10 CFR 2.201(b). In addition, prior to the

issuance of a Notice of Violation pursuant to 10 CFR Part 2.201 or an Order pursuant to 10 CFR 2.202, the individual charged with such a violation shall have the right to inform the agency either by written correspondence or by a predecisional enforcement conference, regarding their involvement in the alleged violation of this section.

The petitioner also proposes that the current NRC regulations pertaining to deliberate misconduct be amended. Although the petitioner did not specifically identify the deliberate misconduct regulations to be amended, the NRC believes that these regulations are 10 CFR 30.10, 40.10, 50.5, 52.9, 60.11, 61.9b, 70.10, 71.11, 72.12, 76.10, and 110.7b. The Commission specifically requests comments on whether this is a complete list of deliberate misconduct regulations that should be amended under the petition. The petitioner's suggested language reads as follows:

An individual charged with a violation of the deliberate misconduct regulations in Part X, has the right to a hearing pursuant to 10 CFR 2.201(b). In addition, prior to the issuance of a Notice of Violation pursuant to 10 CFR 2.201 or an Order pursuant to 10 CFR 2.202, the individual charged with such a violation shall have the right to inform the agency either by written correspondence or by a predecisional enforcement conference, regarding their involvement in the alleged violation of this section.

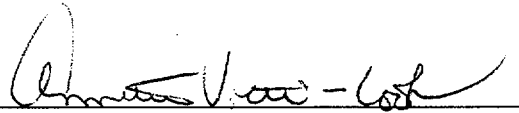
The petitioner contends that his proposed amendment would ensure that all individuals have the opportunity to address an NRC determination that the individual has violated either the deliberate misconduct or employee protection regulations before the NRC issues the action.

The Petitioner's Conclusions

The petitioner concludes that the NRC regulations governing deliberate misconduct and employee protection are missing certain safeguards he believes are important. The petitioner requests that the NRC regulations pertaining to deliberate misconduct and employee protection be amended as discussed above to ensure that each individual has an opportunity to address an NRC determination that he or she has violated these regulations.

Dated at Rockville, Maryland, this 23 day of October, 1999.

For the Nuclear Regulatory Commission.



Annette L. Vietti-Cook,
Secretary of the Commission.